

### REMARKS

This responds to the Office Action mailed on June 25, 2007.

Claims 1, 7, 14, 25, and 31 are amended, claims 5 and 29 are canceled, and no claims are added; as a result, claims 1-4, 6-28, and 30-45 remain pending in this application.

#### §103 Rejection of the Claims

Claims 7-10, 12, 14-22, 24, 31-34 and 36-40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over eBay Internet Archive Wayback Machine (www.archive.com; 07, 12, October 1999, 8 pgs; hereinafter eBay).

Applicants respectfully submit that the rejection of aforementioned claims under 35 U.S.C. § 103 is defective for the reason that prior art references when combined do not teach or suggest all of the claim limitations of the independent claims of the present application.

#### Applicable Law

In rejecting claims under 35 U.S.C. §103, the Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. *See* M.P.E.P. §2142.

In the recent decision of the Supreme Court on *KSR Int'l Co. v. Teleflex Inc.*<sup>1</sup>, the analysis of obviousness previously set forth in *Graham v. John Deere Co. of Kansas City*<sup>2</sup>, was reaffirmed. The Court in *Graham* set out an objective analysis for applying §103 as follows:

“Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined.”<sup>3</sup>

When claim elements are found in more than one prior art reference, the fact finder must determine “whether a person of ordinary skill in the art, possessed with the understandings and knowledge reflected in the prior art, and motivated by the general problem facing the inventor,

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<sup>1</sup> 127 S.Ct. 1727, 82 USPQ.2d 1385 (2007).

<sup>2</sup> 383 U.S. 1, 17, 86 S.Ct. 684, 15 L.Ed.2d 545 (1966).

<sup>3</sup> The Court in *KSR v. Teleflex*, at page 1730, quoted the analysis of *Graham* from page 18.

would have been led to make the combination recited in the claims.” *In re Kahn*<sup>4</sup>. In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co. of Kansas City*<sup>5</sup>.

Further, to establish *prima facie* obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. *In re Royka*<sup>6</sup>. “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*<sup>7</sup>. Office personnel must rely on the applicant’s disclosure to properly determine the meaning of the claims. *Markman v. Westview Instruments*<sup>8</sup>.

Applicants believe that the issue of patentability in view of eBay may be understood with regard to claim 7.

Claim 7 includes the following limitations:

*displaying the information concerning the offering includes displaying a listing currency in conjunction with a native currency to the user.*

The Office Action, in reference to the above limitation, relates the following:

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<sup>4</sup> 441 F.3d 977, 988, 78 USPQ2d 1329, 1337 (Fed. Cir. 2006).

<sup>5</sup> 383 U.S. 1 at 467.

<sup>6</sup> 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

<sup>7</sup> 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

<sup>8</sup> 52 F.3d 967, 980, 34 USPQ2d 1321, 1330 (Fed. Cir.) (*en banc*), *aff'd*, U.S., 116 S. Ct. 1384 (1996).


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<a href="#">STYLOPHONE - Cool 1960's Instrument</a> <a href="#">view</a> <a href="#">pic</a> <a href="#">link</a>	£10.00	-	13/10 19:58 BST
<a href="#">Marshall jtm 100w super lead !!!!</a> <a href="#">view</a> <a href="#">pic</a> <a href="#">link</a>	\$1000.00	-	16/10 18:02 BST
<a href="#">Hofner 6 String Violin Guitar</a> <a href="#">view</a> <a href="#">pic</a> <a href="#">link</a>	\$535.00	4	12/10 13:57 BST
<a href="#">Marshall 1968 superlead plexi in purple !!!!</a> <a href="#">view</a> <a href="#">pic</a> <a href="#">link</a>	\$2425.00	11	11/10 17:32 BST

eBay, page 15.

The Office Action, in reference to the above, states:

"Two items A and B listed as being located in the UK show Item B listed in native UK currency in conjunction with Item A listed in US currency; ..."

Office Action, Page 7

The Office Action, in rejecting claim 1, contends that the above limitation from claim 1 is suggested by the following from eBay:



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I want to convert...

this amount

1

enter any amount

of this type of currency

USD United States Dollars  
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scroll down to see more currencies

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The Universal Currency Converter™ allows you to perform interactive foreign exchange rate conversion on the Internet. Type the amount of source currency in the input box. You may include commas and a decimal point. Select the source and destination currencies using the scrolling selection boxes. Note that there are far more currencies available than the initial four displayed.

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The Office Action, in reference to the above, states:

"...user can convert listing currency to native site currency or other user-specified currency using Universal Currency Converter that allows a user to perform interactive foreign exchange rate conversion on the Internet."

Office Action, Page 7

Claim 7 requires displaying information concerning an offering to a user, the information including a listing currency in conjunction with a native currency. In contrast, the second illustration from eBay relates the display of a conversion result. The display of a conversion result cannot be said to suggest displaying information other than the conversion result itself. Thus, the display of a conversion result does not suggest information concerning an offering that includes a listing currency in conjunction with a native currency, as required by claim 7. Further,

the second illustration from eBay relates nothing about an offering, much less a listing currency, much less a native currency. The second illustration from eBay merely relates the display of a sole conversion result. eBay therefore cannot be said to teach or suggest the above quoted limitations because claim 7 requires displaying information concerning an offering to a user, the information including a listing currency in conjunction with a native currency and the above illustration from eBay relates the display of a sole conversion result. Thus, because eBay, whether considered separately or in combination with other references cited in the Office Action, fail to disclose or suggest each and every element of claim 7, claim 7 and its independent claims are patentable and should be allowed.

Independent claims 14, 18, 31 and 37 each include a limitation corresponding substantially to the above-discussed limitation of claim 7. The above remarks are accordingly also applicable to a consideration of these independent claims. Accordingly, Applicants request that the above remarks also be considered when examining independent claims 14, 18, 31, and 37.

Claims 8-10 and 12 depend on independent claim 7. Claims 15-17 depend on independent claim 14. Claims 19-22 and 24 depend on independent claim 18. Claims 32-34 and 36 depend on independent claim 31 and claims 38-40 depend on independent claim 37. As dependent claims are deemed to include all limitation of claims from which they depend, the rejection of claims 8-10, 12, 15-17, 19-22, 24, 32-34, 36 and 38-40 under 35 U.S.C. § 103(a) is also addressed by the above remarks.

Claims 4 and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over eBay (PTO-892, Item: U) in view of an alleged admission (regarding parsing of universal resource locators).

Applicants respectfully submit that the rejection of the aforementioned claims under 35 U.S.C. § 103 is defective for the reason that the alleged Admission also fails to teach or suggest a category list that includes offering categories that include offerings that respectively include a listing currency and a native currency that is associated with the particular region, as required by claims 7 and 25.

Claims 11, 23 and 35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over eBay in view of McClenahan (PTO-892, Item:V).

Applicants respectfully submit that the rejection of the aforementioned claims under 35 U.S.C. § 103 is defective for the reason that McClenahen also fails to teach or suggest displaying information concerning an offering to a user, the information including a listing currency in conjunction with a native currency, as required by claims 11, 23, and 35.

Claim 13 was rejected under 35 U.S.C. § 103(a) as being unpatentable over eBay in view of Pollick (Paper # 20041209, PTO-892, Item: VV).

Applicants respectfully submit that the rejection of the aforementioned claims under 35 U.S.C. § 103 is defective for the reason that Pollick also fails to teach or suggest displaying information concerning an offering to a user, the information including a listing currency in conjunction with a native currency, as required by claim 13.

Claim 41-44 were rejected under 35 U.S.C. § 103(a) as being unpatentable over eBay.

Applicants respectfully submit that the rejection of the aforementioned claims under 35 U.S.C. § 103 is defective for the reason that eBay, as stated above, fails to teach or suggest displaying information concerning an offering to a user, the information including a listing currency in conjunction with a native currency, as required by claims 41-44.

Claim 45 was rejected under 35 U.S.C. § 103(a) as being unpatentable over eBay in view of Pressler (PTO-892, Item: W).

Applicants respectfully submit that the rejection of the aforementioned claims under 35 U.S.C. § 103 is defective for the reason that Pressler fails to teach or suggest displaying information concerning an offering to a user, the information including a listing currency in conjunction with a native currency, as required by claim 35.

In summary, eBay in combination with an alleged admission in combination with McClenahen in combination with Pollick in combination with Pressler does not teach or suggest each and every limitation of claims 7, 14, 18, 31, and 37 as required to support rejections of these independent claims 7, 14, 18, 31, and 37 of the present application under 35 U.S.C. § 103.

#### §102 Rejection of the Claims

Claims 1-3, 5-6, 25-27, 29 and 30 were rejected under 35 U.S.C. § 102(b) based upon a public use of the invention.

Applicants respectfully submit that the rejection of aforementioned claims under 35 U.S.C. § 102 is defective for the reason that references offered in support of an alleged public use of the invention does not disclose each and every limitation of the independent claims 1 and 25, as amended, of the present application.

A claim is anticipated only if each and every element as set forth in claim is found, either expressly or inherently described, in a single prior art reference

Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, USPQ2d 1051, 1053 (Fed. Cir. 1987)

Claim 1 is representative of claim 25.

Claim 1 includes the following limitation:

*the category list includes offering categories that include offerings available for sale via the network-based commerce facility in a particular region, the offerings respectively include a listing currency and a native currency that is associated with the particular region.*

As discussed above, eBay does not include the limitations of claim 1 discussed above in regard to claim 7. Accordingly, the above remarks for the independent claim 7, as rejected under 35 U.S.C. § 103(a), also apply to the independent claims 1 and 25.

As dependent claims are deemed to include all limitation of claims from which they depend, the rejection of claims 2-3, 5-6, 25-27, 29 and 30 under 35 U.S.C. § 102(e) is also addressed by the above remarks, and the amendments contained herein.

### **RESERVATION OF RIGHTS**

In the interest of clarity and brevity, Applicants may not have addressed every assertion made in the Office Action. Applicants' silence regarding any such assertion does not constitute any admission or acquiescence. Applicants reserve all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided

under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicants do not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicants timely object to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicants reserve all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.



CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney at 408-278-4046 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date September 25, 2007

By / Mark R. Vatuone /  
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 25 day of September 2007.

Peter Rubtsov  
Name

Peter Rubtsov  
Signature